

Lee Sim - Beaver River Distribution Issues — URGENT!!

From: Kerry Carpenter
To: Lee Sim
Date: 06/12/2002 11:18 AM
Subject: Beaver River Distribution Issues — URGENT!!
CC: Jerry Olds; Michael Quealy; Ward Wagstaff

Lee:

First the easier issue: I have spoken to Ronnie Roberts about the "Lenzy Puffer is stealing water" letter. Ron says that he knows Lenzy quite well and believes him to be an honest man, but possibly would have his own understanding of water rights. Lenzy's family (Fred & Glenna Puffer) owns rights on North Creek in the same area and Lenzy may consider that he's using some of their right. Ron is not concerned about Lenzy getting violent and is willing to just contact him and ask him if he's got a pump set in the creek, and if he does, what water right does he believe he's exercising. I told Ron to wait to hear from us. I'm inclined to give Ron the go-ahead to just talk to Mr. Puffer and report back.

Now, the ugly one: A little over a month ago (5/9/02), I sent you (cc: to Kent & Ward) an email with an attached Memorandum regarding the proper distribution of rights under Award 123 in the Beaver River Decree. Do the names Beaumont, Bradshaw, Brown & Baldwin ring any bells? Well, I got no response from anyone to my several questions. It was probably my fault for not being more direct. I am re-attaching that memo to this email.

On Monday, I received a call from the Beaver County Sheriff Yardley asking me to fax him the court order on the Beaumont v. Morgan, Brown et.al litigation. He was apparently getting some requests to "keep the peace" on the manner in which the water was being distributed. After some discussion, he said never mind on the court documents, because I explained that they leave some key issues unresolved.

Please give me some direction on this matter as soon as possible. I realize the memo is kind of long, but the issues are too complex to simplify much more.

In short it comes down to two major questions (each with a couple of sub-questions):

1. If Beaumont owns 1/3 of Award 123(b) and the other 2/3 (Brown & Baldwin) consist of auxiliary rights without a primary counterpart, is Beaumont still limited to 1/3 of the flow in the source? I know he's limited to 1/3 of the acres, but how do we distribute the flow? Brown & Baldwin know they can't irrigate with it, but if left in the channel, they will receive some benefit from it under other rights downstream. Should Beaumont be required to allow 2/3 of the flow (or the entire flow 2/3 of the time) to by-pass his diversion? (See Findings of Fact, paragraph 19).
2. Have the actions of our office and the District Court effectively eliminated 1/3 of the original 65 acres under Award 123? We let Brown move 1/3 to another place of use and Beaumont has retained a right to 1/3 at the decreed place of use. Where's the remaining 1/3? Is it gone, or can Brown claim it under the ownership of 2/3 of Award 123(a)? If Brown can claim it, then it must still be at the decreed place of use and Brown or Baldwin should be able to irrigate there using either/both the primary and auxiliary rights. Right?

We have people getting desperate and cows that need a drink. I realize this is a small matter in terms of the larger problems, but we need to give our commissioner and the water users some clear and unequivocal direction. I need some help.

Kerry

Kerry & I agree that
 Probably need a 21.67 ac still
 with Brown
 conference call
 w/ Ward & Kent
 to resolve this.
 Beaumont will probably
 challenge our decision
 in court.

Handwritten notes on the right side of the pink sticky note:
 21.67 ac still
 with Brown
 21.67
 to
 Baldini